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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/101,846 07/17/98 FINZEL

L P-981197

EXAMINER

MM91/0907

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HENRY, J.

ART UNIT

PAPER NUMBER

2872

DATE MAILED:

09/07/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/101,846

Applicant(s)

FINZEL ET AL.

Examiner

Jon W. Henry

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-47, 49, 50, 52, 53 and 56-73 is/are pending in the application.
- 4a) Of the above claim(s) 2-47, 49, 50, 52, 53 and 56-71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 72 and 73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Reopening of Prosecution

1. In view of the appeal brief filed on August 13, 2001, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (b) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Entry of Amendment

2. The amendment after final rejection received June 15, 2001, has been entered and prosecution proceeds with the claims as amended therein.

Election/Restrictions

3. Applicant's election with traverse of Group 1 and species (a) in Paper No. 13 is again acknowledged. Claims 2-47, 49, 50, 52, 53, and 56-71 stand finally withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to nonelected inventions.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 43 (see Fig. 7).

Correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 73 and 72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 73 was amended after final rejection to recite plural "optical fibre cables." Claim 73, lines 8-15 now recite "each of the lead-in spigots being a pipe tightly fitted on the closure body, each of optical -fibre cables being selected from an optical waveguide minicable and an optical wave microcable, respectively having a pipe and waveguides selected from optical waveguides, waveguide strips and optical waveguide bundles loosely introduced into the pipe, said cables being received in the cable lead-in units with the pipe of each spigot engaging the pipe of the optical-fibre cable disposed therein and having a sealing connection of the pipe of the spigot to the pipe of the cable for sealing off the pipe of each cable."

It appears the "respectively having a pipe" refers to a "cable" pipe as opposed to a spigot "pipe" and "respectively" is intended to indicate each cable, actually a minicable or microcable, has an associated (cable) "pipe." With regard to Figs. 6 and 7 (pages 12 and 13 of the specification), it appears cable lead-in unit, cable lead-in spigot, and (spigot) "pipe" all refer to

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pipe 13 of Fig. 6. On the other hand, the “cable” pipe appears to refer to element 43 of Fig. 7, although, as noted with regard to the drawings, as noted previously, the specification does not relate reference number 43 to any element. However, that does not agree with the “disposed therein” recitation of claim 73. It may be that “cable lead-in unit” of the specification is intended to include adaptation sleeve 87 but it clearly does not in the present specification, pages 12 and 13. Therefore, the “disposed therein” recitation is unclear.

Further, in that regard, the recitations of claim 72 (that depends from claim 73) relates to page 2a, lines 1-20, that also fails to clarify if the various connection techniques are intended to relate to the abutting “pipes” 11 and 13 or the pipe(s) joining adaptation sleeves 87. Additionally, in claim 72, the phrase “a sealing connection of the pipe connection technology “ is unclear because the phrase “of the pipe connection technology” is strange and appears without proper antecedent, as well as because it is unclear what is being connected to what, that is, what is being “sealed.” For all of the above reasons, claims 72 and 73 are unclear.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 73 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finzel.

Finzel discloses an optical fibre transmission system comprising a cable closure with a cable body 1, excess length depositories, for cable waveguides, cable lead-in units, spigots, pipes

5, a sealed closure cover 4, cable pipes 25 and cables 25. Cable pipes 25 may be sealed in spigots 5, as by a bushing seal (see Finzel, page 4, lines 10-13).

The one-piece construction of pipes 5 with the closure body 1 of Finzel is deemed to be a construction “tightly fitted on the closure body,” in fact as closely as possible. Alternatively, if somehow the construction were deemed not “tightly fitted” because they are formed in one piece, it would have been obvious to one of ordinary skill in the art to make the pipes 5 separately and then tightly seal them together because it is conventional generally to form projecting pipe sections separately and unite them to containers in lieu of one-piece construction because of difficulties of one piece construction of such complicated shapes. Additionally, that holding of obviousness is in close accord with case law regarding the obviousness of “making separable.” *In re Dulberg*, 289 F.2d 522, 523, 129 USPQQ 348, 349 (CCPA 1961); MPEP 2144.04 V. C. One would expect such a pipe to be tightly fitted to seal properly. Although Finzel does not disclose how pipe 25 is secured to pipe section 5, adhesive bonding would have been obvious as a conventional securing means that would assure the desired relationship at all times during shipping and use, regardless of tolerance of manufacture. Additionally, although Finzel does not disclose splice organizations, splice organizations are conventional in cable connection and storage systems of coiled cables and therefore such would have been obvious. Furthermore, minicables and microcables are conventional optical cables of the type of Finzel and therefore the choice of either of those types of cables would have been obvious. Additionally, if “minicable and microcables” were deemed to denote a variation in size from “cables” as broadly disclosed by Finzel, they would have been obvious in accordance with various case law clarifying the obviousness of variations in size. See, e.g., *In re Rinehart*, 531 F.2d 1048, 189

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USPQ 143 (CCPA 1976); Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469, U.S. 830, 225 USPQ, 232 (1984); MPEP 21444.04 IV. A.

With regard to claim 73, it would be obvious to one of ordinary skill in the art that a pipes 5 and 25, to join pipes 5 and 25 of Finzel tightly fitted” as set forth previously either by rigid connections or a tightly sealed sliding connection to protect the interior of closure 1 from external water and particles because both are common conventional joining techniques. In particular, with regard to rigid connections, welding, soldering, and adhesive bonding are all conventional pipe joining techniques and therefore any of them would have been obvious, barring a showing to the contrary.

9. Claim 72 is further rejected under 35 U.S.C. 103(a) as being unpatentable over Finzel, as applied to claims above, and further in view of Grenier.

If a reference really be considered required to demonstrate the conventionality and obviousness of welding, soldering, and/or adhesive bonding for pipe connections, then Grenier clearly provides such teachings (see, e.g., column 1, lines 10-15 or Grenier).

Response to Applicant's Arguments in the Appeal Brief

10. With regard to claim 73, the thrust of applicant's remarks, as applicable to the present rejections, is that “pipe 5 [of Finzel] is not a cable pipe, as recited in [claim 72]” (applicant's brief, page 5, lines 5-6). Clearly, the pipe 5 of Finzel *is* a cable pipe, and whether or not one considers it a pipe *as recited in claim 72* (with regard to “tightly fitted on the closure body” and the one-piece structure of 5 and 25 of Finzel discussed in the rejection of item no. 7 previously), if such is not inherent it clearly would have been obvious as set forth in the rejection of item no.

7.

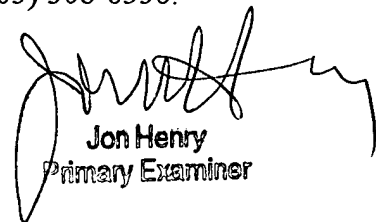
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With regard to claim 72, the thrust of applicant's remarks, as applicable to the present rejections, is that "cable 7 of the [Finzel] does not have a pipe" (applicant's brief, page 5, line 19. However, applicant fails to explain how "pipe 5" (quoting applicant's brief, page 5, lines 5-6, as the preceding paragraph, describing element 5 of Finzel) is not a pipe. Additionally, applicant's remarks recite no evidence of the obviousness of adhesive bonding being obvious has been presented. The use of welding, soldering, and adhesive bonding to connect pipes is so well known as be obvious on its face. However, the examiner has also provided a reference, Grenier, to clarify the obviousness of soldering, welding, and/or adhesive bonding for pipe connection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon W. Henry whose telephone number is (703) 305-6106. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cassandra Spyrou can be reached on (703) 308-1687. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0530.

jwh
August 31, 2001



Jon Henry
Primary Examiner



Cassandra Spyrou
Supervisory Patent Examiner
Technology Center 2800